v. *Quirk,* 9 Minn. 179, 86 Am. Dec. 93; *Western Union Tel. Co.* v. *Fulling,* 49 Ind. App. 172, 96 N. E. 967. On the other hand, some courts have held that the defense may become available although not pleaded. Thus, in an action to enforce an alleged Sunday contract, the fact that defendant in his answer did not assert the invalidity of the contract because of its execution on Sunday, did not preclude him from thereafter availing himself of such defense. *Pearson* v. *Kelly,* 122 Wis. 660, 100 N. W. 1064; *Jacobson* v. *Bentzler,* 127 Wis. 566, 107 N. W. 7, 4 L. R. A. N. S. 1151, 115 Am. St. Rep. 1052. In *Pearson* v. *Kelly,* supra, the court said, "To entertain such actions would aid the parties to enforce agreements which are repugnant to public policy. Parties to such an agreement are deemed equally guilty in the eye of the law, and must be left to suffer the consequences of their transgression, and meet with the disapproval of the courts in denying them the usual remedies of the law." In this case the defense was allowed on appeal. The holding in the principal case, that the defense of illegality arising from the making of the contract on Sunday is merely a technical matter of pleading, can hardly be reconciled with the general rule that "in an action at law, where the defendant does not set up the defense of the illegality of the contract used on, but such illegality appears from the case as made by either the plaintiff or defendant, it becomes the duty of the court, *sua sponte,* to refuse to entertain the action"; nor with the corollary to that rule, that an appellate court will dismiss an action based on an illegal contract notwithstanding the fact that the question of its legality was not raised in the trial court. *Gravier* v. *Carraby,* 17 La. 132; *Cansler* v. *Penland,* 125 N. C. 578, 34 S. E. 683.

RULE IN SHELLEY'S CASE.—A testator devised property to E. S. "and his male heir forever." On questions arising as to the effect of the devise to E. S., as to whether he took an estate tail, or a fee simple, or a life interest, it was *held,* that the devise fell within the rule of *Shelley's Case* rather than within the rule of *Archer's Case,* for that the words "male heir forever" were words of limitation and not of purchase. *Silcocks* v. *Silcocks* [1916], 2 Ch. 161, 85 L. J. Ch. 464.

Whether a situation was created by the will which brought the rule in *Shelley's Case* into operation depends solely upon what "male heir forever" is taken to mean. Did the testator mean to describe a certain person as the purchaser or did he merely intend to grant the remainder by way of limitation to whomsoever should be the male heir of E. S.? This devise differs in several respects from the usual one upon which the rule in *Shelley's Case* (1581), 1 Co. Rep. 93b, 76 Eng. Rul. Cas. 206, operates. It is to the heir rather than the heirs of E. S. Is this enough to prevent the operation of the rule? No, for in a will the word heir in the singular is primarily one of limitation and not of purchase. *Richards* v. *Bergavenny,* 2 Vern. 324, 23 Eng. Rul. Cas. 810. *Archer's Case* (1597), 1 Co. Rep. 66b, 76 Eng. Rul. Cas. 146, was decided as without the rule in *Shelley's Case,* not only because the remainder was to the next heir male in the singular, but also because of the superadded words of limitation, "to the heirs male of the body of such

next heir male" which were regarded as indicating that the person who should be the heir was to take as a purchaser and so to become a new stock of descent. Because the instant case is also a gift to the heir in the singular number the sole question should be whether there are sufficient superadded words of limitation, or whether there is such a change in the usual order of the words used as to indicate an intention that the testator meant something other than that the words "male heir" were used as words of limitation. Should the fact that he said "male heir" instead of "heir male" make any difference. It has been held that these two phrases have precisely the same meaning. *Blackburn* v. *Stables,* 2 V. & B. 367, 35 Eng. Rul. Cas. 358; *Doe d. Angell* v. *Angell,* 15 L. J. Q. B. 193. Should the use of the word "forever" take the case out of the rule of *Shelley's Case?* The court said it should not, relying on *Fuller* v. *Chamier,* L. R. 2 Eq. 682, 35 L. J. Ch. 772, which held that though the word "forever" might create a fee "it is necessary that there should be a clear and distinct limitation to the heir in the singular number, with the limitation over to the heirs in the plural number, in order to show that the singular heir is made the stirps, and that the descent is to take place from him." This rule would limit the application of *Archer's Case* to a situation entirely analogous, to cases in which practically the same words of limitation were used. It has been suggested that any form of words which indicates that the heir to whom the remainder is limited was to take a fee would invoke the rule in *Archer's Case,* 9 ILL. L. REV. 586. But it is submitted that since in *Shelley's Case* too there was a gift to the heirs male of E. S. "and the heir male of the body of such heirs male" the application of the doctrine of *Shelley's Case* as applied in *Fuller* v. *Chamier,* supra, is correct. See 29 L. R. A. N. S. 963, note.

SALES—VALIDITY OF BULK SALES ACT.—The New York Court of Appeals has declared the so-called SALES IN BULK LAW (Personal Property Law, §44 L. 1914, Ch. 507), making transfers of goods in bulk presumptively fraudulent, except upon compliance with prescribed requirements for notice to creditors of seller, constitutional—*Klein et al.* v. *Marvelas* (N. Y. 1916), 114 N. E. 809.

In *Wright* v. *Hart* (1905), 182 N. Y. 330, a very similar statute enacted in 1904 (L. 1904, Ch. 569) was held to be in conflict with those clauses of the Federal and State Constitutions providing that no person shall be deprived of life, liberty, or property without due process of law, and that no state shall deny to any person the equal protection of its laws, in that the statute affected the liberty and property of a limited class of citizens by arbitrarily and unnecessarily restricting their right to contract for, bargain and sell a particular kind of property. The clauses in both the federal and state constitutions referred to in that decision have remained unchanged. Since that case was decided the validity of similar statutes has been upheld in a large number of states, and by the United States Supreme Court in *Lemieux* v. *Young,* 211 U. S. 489, and *Kidd, Dater and Price Co.* v. *Musselman Grocery Co.,* 217 U. S. 461. In delivering the opinion of the court in the principal case, CARDOZO, J., said: "We think it is our duty to hold that